



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Order Instituting Rulemaking to Implement the)
California Renewables Portfolio Standard)
Program.)

Rulemaking 04-04-026
(Filed April 22, 2004)

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) OPPOSITION TO THE
PETITION OF THE CALIFORNIA WIND ENERGY ASSOCIATION AND THE
GREEN POWER INSTITUTE FOR MODIFICATION OF DECISION 05-12-042

FRANK J. COOLEY
CATHY KARLSTAD
WILLIAM V. WALSH

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-4531
Facsimile: (626) 302-3540
E-mail: William.V.Walsh@SCE.com

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Pursuant to Rule 16.4 of the California Public Utilities Commission’s (the “Commission”) Rules of Practice and Procedure and the June 28, 2007 Ruling of Administrative Law Judge Anne E. Simon on the motion to expedite, Southern California Edison Company (“SCE”) files this Opposition to the Petition of the California Wind Energy Association and the Green Power Institute (collectively referred to as the “Petitioners”) to Modify Decision 05-12-042: Interim Opinion Adopting Methodology for the 2005 Market Price Referent (the “Petition”).

I.

INTRODUCTION

The Petitioners request a modification to D.05-12-042 to allow a greenhouse gas (“GHG”) adder to be included in the 2007 market price referent (“MPR”) and successive MPRs.¹ The crux of the Petitioners’ argument is that the enactment of Assembly Bill 32 (“AB 32”) and Senate Bill 1368

¹ See Petition at 2.

(“SB 1368”), both effective January 1, 2007,² resulted in a change of circumstances that justifies reopening and modifying D.05-12-042 to include a GHG adder to the MPR.³ However, as discussed in more detail below, the Petitioners’ request should be rejected because they misapply AB 32 and SB 1368. In D.05-12-042, the Commission explicitly rejected the use of a GHG adder until “known and actual costs” related to GHG emissions were incurred in the purchase of conventional generation. While AB 32 and SB 1368 are current law, these laws have not resulted in such costs. Therefore, the same reasoning stated in D.05-12-042 that led the Commission to reject a GHG adder in the first place still exists today.

Furthermore, the Petitioners also imply that previous Commission decisions and a Commission order support including a GHG adder in the MPR calculation. Reliance on these authorities, however, is misplaced in that these authorities have already been rejected by the Commission in D.05-12-042 and/or are simply not applicable or analogous to the present situation.

A. The Petitioners’ Request To Include A GHG Adder Based On Recent Legislation Must Be Rejected

In D.05-12-042, the Commission explicitly rejected the inclusion of a GHG adder in the MPR because these costs were “too speculative” and the “MPR methodology would incorporate only ‘known and actual costs.’”⁴ In that decision, the Commission further stated that:

Our extensive record on the 2005 MPR reveals no current price element of fixed price electricity from new gas-fired generating facilities that includes an estimate of the cost of possible future carbon regulation. Therefore, as PG&E points out, the adder “is not an out-of-pocket expense incurred by the conventional fired generator, and should not be included in the MPR.”⁵

² The effective date of the legislation begs the question why the Petitioners waited until June 2007 to file their Petition along with a motion for expedited treatment. Any need for expedited treatment was created solely by the Petitioners’ own failure to file their Petition earlier in the year. Furthermore, separate and apart from this unexplained delay in filing the Petition, all of the Commission decisions cited to by the Petitioners in support of their position were issued before 2006.

³ See Petition at 3-5.

⁴ D.05-12-042 at 46 (*citing* D.03-06-071) (emphasis added).

⁵ See *id.* at 46-47 (emphasis added).

This circumstance still persists today. Load serving entities (“LSEs”) still do not pay “out-of-pocket” expenses for GHG emissions related to conventional generation. Despite this fact, the Petitioners now argue that AB 32 and SB 1368 somehow allow the Commission to include a GHG adder to the MPR. A closer examination of the Petitioners’ argument, however, reveals that these two laws do not support the inclusion of such an adder.

AB 32 provides that the California Air Resources Board (“CARB”), in consultation with the Commission, shall adopt GHG emission limits and emission reduction measures by regulation by January 1, 2012.⁶ To date, neither CARB nor the Commission has developed such regulations. Therefore, the “out-of-pocket” expenses required by D.05-12-042 as a basis for including a GHG adder have not occurred and may not occur until the year 2012. While recognizing this fact, the Petitioners argue that the legislation contemplates that CARB and the Commission *may* establish state-wide GHG emissions limits before 2012. However, these standards have not been developed and it would not be proper to include a GHG adder based on such unknown limits. Indeed, because these limits have not been established for AB 32, quantifiable impacts in the form of a GHG adder to the MPR would only be speculation. This speculation is the exact reason why the Commission rejected a GHG adder in D.05-12-042.

Moreover, in D.06-02-032, the Commission determined that a *load-based* cap on GHG emissions should be applied to LSEs. The MPR, however, is a *source-based* price referent. Therefore, assuming the Commission adopts GHG limits based on *load-base* caps for LSEs, the regulations for AB 32 will never be applicable to the MPR, because no known “out-of-pocket” expenses for conventional generation will ever be established.

In addition, SB 1368 also does not create “out-of-pocket” expenses for conventional generation with respect to GHG emissions. The GHG emissions performance standard established by SB 1368 is simply the amount of GHG emissions from a “combined-cycle natural gas baseload generation.”⁷ Therefore, because a new combined cycle gas turbine (“CCGT”) serves as the proxy

⁶ See California Health and Safety Code § 38562.

⁷ SB 1368, Cal. Pub. Util. Code § 8341(d).

for establishing the MPR,⁸ there would be no “known and actual costs” for GHG emissions standards under SB 1368, because, by definition, a new CCGT under the MPR methodology meets the standard of the legislation.

The Petitioners appear to concede this point and argue that, despite this fact, a new CCGT will still be subject to the AB 32 limits by 2012, and, therefore, at the very least, the Commission should adopt a GHG adder that assumes these “out-of-pocket” expenses by that date.⁹ To this end, the Petitioners provide a suggested GHG adder for a 2012 start date for GHG regulations.¹⁰ Again, the Petitioners’ argument is inconsistent with D.05-12-042. As recognized by the Petitioners, the required GHG regulations of AB 32 have not been established and it would be impossible to establish “known and actual costs” of these regulations as required by D.05-12-042. Therefore, even a suggested GHG adder that contemplates the inclusion of an adder based on the establishment of GHG regulations in 2012 would be speculative.

Accordingly, because no “known and actual costs” associated with GHG regulation exists, the Commission must reject Petitioners’ request to modify D.05-12-042 to allow for a GHG adder to the MPR.

B. Previous Commission Decisions Do Not Provide A Basis For Establishing A GHG Adder To The MPR

The Petitioners cite two Commission decision (D.05-04-024 and D.04-12-048) and a Commission order in support of the use of an avoided cost model by Energy and Environmental Economic (“E3”) to assign a value to avoided GHG emissions (the “E3 Model”).¹¹ The Petitioners also imply that these authorities support establishing a GHG adder to the MPR.¹² As discussed in more detail below, reliance on these authorities is misleading. Initially, both of these decisions pre-

⁸ See D.05-12-042.

⁹ See Petition at 4-5.

¹⁰ See *id.* at 10.

¹¹ See *id.* at 5-8.

¹² See *id.*

date the MPR decision Petitioners seek to modify. Presumably, the Commission took into account both decisions in deciding D.05-12-042 and still determined that a GHG adder would be too speculative for the MPR because it is not based on “known and actual costs.”

Petitioners first rely on D.05-04-024, which provides that the investor owned utilities’ (“IOUs”) must utilize the E3 model as an input in evaluating energy efficiency programs. Based on this decision, Petitioners argue that if GHG costs are included in evaluating energy efficiency programs, they should also be used in valuing RPS resources.¹³ The Petitioners’ argument, however, makes an unjustified and unexplained leap in logic between the evaluation of energy efficiency programs and the IOUs’ evaluation of RPS resources, which does not include the use of the MPR to value or evaluate RPS resources. In fact, the MPR is not released or used in any way until after bidding in the IOUs’ annual RPS solicitations have closed and the IOUs have completed their evaluation of such bids through the creation of a “short-list.”¹⁴ Furthermore, the MPR does not establish the value of an RPS project over other resources. The MPR establishes the pricing point that an RPS resource becomes eligible for supplemental energy payments (“SEPs”).¹⁵ Therefore, Petitioners’ reliance on D.05-04-024 is misplaced.

Petitioners also rely on D.04-12-048.¹⁶ Petitioners fail to mention, however, that in the decision they seek to modify (D.05-04-042) the Commission *explicitly* rejected the use of this earlier decision as a basis for including a GHG adder. Specifically, the Commission stated:

In D.04-12-048, we advanced the adder as a tool for the utilities to use in comparing and evaluating their procurement choices among conventionally fueled and renewable energy sources. We explicitly said that the “GHG value. . . *will not* be paid to that generator or charged to ratepayers; it is an analytic tool only. Winning bidders are to be paid the prices that they bid. Thus, the effect of the adder is to potentially change which bids and resources are selected - not to change the price of selected bids.”¹⁷

¹³ See *id.* at 6.

¹⁴ See D.05-12-042 at 57, Ordering Paragraph 3.

¹⁵ See Pub. Util. Code § 399.15.

¹⁶ See Petition at 6-7.

¹⁷ D.05-12-042 at 46 (*quoting* D.04-12-048) (emphasis in original).

Based on this language, the Commission concluded that a GHG adder should not be used because it did not represent an “out-of-pocket” expense to the IOUs.¹⁸ Thus, as the Commission originally determined in D.05-12-042, a GHG adder should not be included in the MPR methodology based on D.04-12-048.

Finally, Petitioners attempt to rely on an order from A.04-02-026 amending the cost-effectiveness calculations of SCE’s steam generator replacement project at the San Onofre Nuclear Generation Station in D.05-12-040.¹⁹ Specifically, the Petitioners state:

[I]f the Commission is evaluating the ratepayers' responsibility for utility-owned resource additions - such as the new steam generators at SONGS - against CCGT costs that include a GHG adder, then the 2007 MPR and successive MPRs should also include a GHG adder. Failure to do so would unduly discriminate against new RPS generation.²⁰

However, Petitioners fail to explain the connection between not including a GHG adder in the MPR, and RPS generation being discriminated against other resources. As the Petitioners are aware, the IOUs purchase a large majority, if not all, of their renewable energy through annual competitive solicitations that are exclusive to RPS resources. In these solicitations, the IOUs cannot possibly use the MPR to discriminate between different renewable projects, because, as stated above, the MPR is not established until after the IOUs develop their short-lists. Furthermore, the MPR itself would not be the basis for rejecting one project over another. Again, the MPR simply establishes the pricing point at which an RPS project becomes eligible to receive SEPs. Therefore, any suggestion that the failure to include a GHG adder to the MPR would somehow discriminate against RPS resources should also be rejected.

¹⁸ See *id.* at 46-47.

¹⁹ See Petition at 7.

²⁰ *Id.*

II.

CONCLUSION

For the foregoing reasons, the Commission should deny the Petitioners' petition to modify D.05-12-042 and not include a GHG adder to the 2007 and subsequent MPR.

Respectfully submitted,

FRANK J. COOLEY
CATHY KARLSTAD
WILLIAM V. WALSH

/s/ William V. Walsh

By: William V. Walsh

Attorneys for

SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-4531
Facsimile: (626) 302-3540
E-mail: William.V.Walsh@SCE.com

Dated: July 17, 2007

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) OPPOSITION TO THE PETITION OF THE CALIFORNIA WIND ENERGY ASSOCIATION AND THE GREEN POWER INSTITUTE FOR MODIFICATION OF DECISION 05-12-042 on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **17th day of July, 2007**, at Rosemead, California.

/s/ Sara Carrillo
Sara Carrillo
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770

R.04-04-026

Tuesday, July 17, 2007

ABBAS M. ABED
ASSOCIATE DIRECTOR
NAVIGANT CONSULTING, INC.
402 WEST BROADWAY, SUITE 400
SAN DIEGO, CA 92101
R.04-04-026

JASON ABIECUNAS
BLACK & BEATCH GLOBAL RENEWABLE
ENERGY
RENEWABLE ENERGY CONSULTANT
11401 LAMAR
OVERLAND PARK, KS 66211
R.04-04-026

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
R.04-04-026

LYNN M. ALEXANDER
LMA CONSULTING
129 REDWOOD AVENUE
CORTE MADERA, CA 94925
R.04-04-026

CATHIE ALLEN
PACIFICORP
825 NE MULTNOMAH STREET, SUITE 2000
PORTLAND, OR 97232
R.04-04-026

GARY L. ALLEN
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
R.04-04-026

SCOTT J. ANDERS
RESEARCH/ADMINISTRATIVE DIRECTOR
UNIVERSITY OF SAN DIEGO SCHOOL OF
LAW
5998 ALCALA PARK
SAN DIEGO, CA 92110
R.04-04-026

ROD AOKI
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104
R.04-04-026

Nilgun Atamturk
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5303
SAN FRANCISCO, CA 94102-3214
R.04-04-026

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO, CA 95460
R.04-04-026

R. THOMAS BEACH
PRINCIPAL CONSULTANT
CROSSBORDER ENERGY
2560 NINTH STREET, SUITE 213A
BERKELEY, CA 94710-2557
R.04-04-026

ROGER BERLINER
PRESIDENT
BERLINER LAW PLLC
1747 PENNSYLVANIA AVE. N.W., STE 825
WASHINGTON, DC 20006
R.04-04-026

C. SUSIE BERLIN
MC CARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, STE. 501
SAN JOSE, CA 95113
R.04-04-026

SCOTT BLAISING
ATTORNEY AT LAW
BRAUN & BLAISING, P.C.
915 L STREET, SUITE 1420
SACRAMENTO, CA 95814
R.04-04-026

BILLY BLATTNER
SAN DIEGO GAS & ELECTRIC COMPANY
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO, CA 94102
R.04-04-026

WILLIAM H. BOOTH
ATTORNEY AT LAW
LAW OFFICE OF WILLIAM H. BOOTH
1500 NEWELL AVE., 5TH FLOOR
WALNUT CREEK, CA 94556
R.04-04-026

GLORIA BRITTON
ANZA ELECTRIC COOPERATIVE, INC.
PO BOX 391909
ANZA, CA 92539
R.04-04-026

DEBORAH BROCKETT
CONSULTANT
NAVIGANT CONSULTING, INC.
ONE MARKET STREET
SAN FRANCISCO, CA 94105
R.04-04-026

R.04-04-026

Tuesday, July 17, 2007

ANDREW B. BROWN
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95814
R.04-04-026

NINA BUBNOVA
CASE MANAGER
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO, CA 94177
R.04-04-026

DAN L. CARROLL
ATTORNEY AT LAW
DOWNEY BRAND LLP
555 CAPITOL MALL, 10TH FLOOR
SACRAMENTO, CA 95814
R.04-04-026

TIMOTHY CASTILLE
LANDS ENERGY CONSULTING, INC.
18109 SE 42ND STREET
VANCOUVER, WA 98683
R.04-04-026

STEVE CHADIMA
ENERGY INNOVATIONS, INC.
130 WEST UNION STREET
PASADENA, CA 91103
R.04-04-026

JENNIFER CHAMBERLIN
STRATEGIC ENERGY, LLC
2633 WELLINGTON CT.
CLYDE, CA 94520
R.04-04-026

CLIFF CHEN
UNION OF CONCERNED SCIENTIST
2397 SHATTUCK AVENUE, STE 203
BERKELEY, CA 94704
R.04-04-026

WILLIAM H. CHEN
CONSTELLATION NEW ENERGY, INC.
ONE MARKET STREET
SAN FRANCISCO, CA 94105
R.04-04-026

MARY COLLINS
POLICY ADVISOR TO COMMISSIONER
LIEBERMAN
ILLINOIS COMMERCE COMMISSION
160 NORTH LASALLE STREET, STE. C-800
CHICAGO, IL 60601
R.04-04-026

THOMAS P. CORR
SEMPRA ENERGY GLOBAL ENTERPRISES
101 ASH STREET, HQ16C
SAN DIEGO, CA 92101
R.04-04-026

DOUGLAS E. COVER
ENVIRONMENTAL SCIENCE ASSOCIATES
225 BUSH STREET, SUITE 1700
SAN FRANCISCO, CA 94104
R.04-04-026

BRIAN CRAGG
ATTORNEY AT LAW
GOODIN, MACBRIDE, SQUERI, RITCHIE &
DAY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
R.04-04-026

JOHN DALESSI
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078
R.04-04-026

DOUG DAVIE
DAVIE CONSULTING, LLC
3390 BEATTY DRIVE
EL DORADO HILLS, CA 95762
R.04-04-026

KYLE DAVIS
PACIFICORP
825 NE MULNOMAH, SUITE 2000
PORTLAND, OR 97232
R.04-04-026

DEREK DENNISTON
THE DENNISTON GROUP, LLC
101 BELLA VISTA AVE
BELVEDERE, CA 94920
R.04-04-026

CHRIS ANN DICKERSON, PHD
FREEMAN, SULLIVAN & CO.
100 SPEAR ST., 17/F
SAN FRANCISCO, CA 94105
R.04-04-026

WILLIAM F. DIETRICH
ATTORNEY AT LAW
DIETRICH LAW
2977 YGNACIO VALLEY ROAD, 613
WALNUT CREEK, CA 94598-3535
R.04-04-026

R.04-04-026

Tuesday, July 17, 2007

Paul Douglas
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
AREA 4-A
SAN FRANCISCO, CA 94102-3214
R.04-04-026

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367
R.04-04-026

JOHN DUTCHER
VICE PRESIDENT - REGULATORY AFFAIRS
MOUNTAIN UTILITIES
3210 CORTE VALENCIA
FAIRFIELD, CA 94534-7875
R.04-04-026

Shannon Eddy
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4102
SAN FRANCISCO, CA 94102-3214
R.04-04-026

BARRY H. EPSTEIN
FITZGERALD, ABBOTT & BEARDSLEY, LLP
1221 BROADWAY, 21ST FLOOR
OAKLAND, CA 94612
R.04-04-026

SAEED FARROKHPAY
FEDERAL ENERGY REGULATORY
COMMISSION
110 BLUE RAVINE RD., SUITE 107
FOLSOM, CA 95630
R.04-04-026

DIANE I. FELLMAN
ATTORNEY AT LAW
FPL ENERGY, LLC
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102
R.04-04-026

Julie A Fitch
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
EXECUTIVE DIVISION ROOM 5203
SAN FRANCISCO, CA 94102-3214
R.04-04-026

LAW DEPARTMENT FILE ROOM
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO, CA 94120-7442
R.04-04-026

CENTRAL FILES
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP31E
SAN DIEGO, CA 92123
R.04-04-026

Thomas Flynn
CALIF PUBLIC UTILITIES COMMISSION
770 L STREET, SUITE 1050
SACRAMENTO, CA 95814
R.04-04-026

RYAN FLYNN
PACIFICORP
825 NE MULTNOMAH STREET, 18TH FLOOR
PORTLAND, OR 97232
R.04-04-026

MATTHEW FREEDMAN
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102
R.04-04-026

SUSAN FREEDMAN
SAN DIEGO REGIONAL ENERGY OFFICE
8520 TECH WAY, SUITE 110
SAN DIEGO, CA 92123
R.04-04-026

JOHN GALLOWAY
UNION OF CONCERNED SCIENTISTS
2397 SHATTUCK AVENUE, SUITE 203
BERKELEY, CA 94704
R.04-04-026

ROBERT B. GEX
ATTORNEY AT LAW,
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533
R.04-04-026

RAMONA GONZALEZ
EAST BAY MUNICIPAL UTILITY DISTRICT
375 ELEVENTH STREET, M/S NO. 205
OAKLAND, CA 94607
R.04-04-026

JOE GRECO
CAITHNESS OPERATING COMPANY
9590 PROTOTYPE COURT, SUITE 200
RENO, NV 89521
R.04-04-026

R.04-04-026

Tuesday, July 17, 2007

DANIEL V. GULINO
RIDGEWOOD POWER MANAGEMENT, LLC
947 LINWOOD AVENUE
RIDGEWOOD, NJ 7450
R.04-04-026

Julie Halligan
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 2203
SAN FRANCISCO, CA 94102-3214
R.04-04-026

TOM HAMILTON
MANAGING PARTNER
ENERGY CONCIERGE SERVICES
321 MESA LILA RD
GLENDALE, CA 91208
R.04-04-026

JANICE G. HAMRIN
CENTER FOR RESOURCE SOLUTIONS
PO BOX 29512
SAN FRANCISCO, CA 94129
R.04-04-026

ARNO HARRIS
RECURRENT ENERGY, INC.
220 HALLECK ST., SUITE 220
SAN FRANCISCO, CA 94129
R.04-04-026

FRANK W. HARRIS
REGULATORY ECONOMIST
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE
ROSEMEAD, CA 91770
R.04-04-026

ARTHUR HAUBENSTOCK
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105
R.04-04-026

CHRISTOPHER HILEN
ASSISTANT GENERAL COUNSEL
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO, NV 89511
R.04-04-026

SETH D. HILTON
STOEL RIVES
111 SUTTER ST., SUITE 700
SAN FRANCISCO, CA 94104
R.04-04-026

LENNY HOCHSCHILD
EVOLUTION MARKETS, LLC
RENEWABLE ENERGY MARKETS
425 MARKET STREET, SUITE 2200
SAN FRANCISCO, CA 94105
R.04-04-026

DAVID L. HUARD
ATTORNEY AT LAW
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES, CA 90064
R.04-04-026

TAMLYN M. HUNT
ENERGY PROGRAM DIRECTOR
COMMUNITY ENVIRONMENTAL COUNCIL
26 W. ANAPAMU ST., 2/F
SANTA BARBARA, CA 93101
R.04-04-026

CAROL J. HURLOCK
CALIFORNIA DEPT. OF WATER RESOURCES
3310 EL CAMINO AVE. RM 300
SACRAMENTO, CA 95821
R.04-04-026

MICHAEL A. HYAMS
POWER ENTERPRISE-REGULATORY
AFFAIRS
SAN FRANCISCO PUBLIC UTILITIES COMM
1155 MARKET ST., 4TH FLOOR
SAN FRANCISCO, CA 94103
R.04-04-026

JONATHAN JACOBS
PA CONSULTING GROUP
390 INTERLOCKEN CRESCENT, SUITE 410
BROOMFIELD, CO 80021
R.04-04-026

TODD JAFFE
ENERGY BUSINESS BROKERS AND
CONSULTANTS
3420 KEYSER ROAD
BALTIMORE, MD 21208
R.04-04-026

Aaron J Johnson
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4202
SAN FRANCISCO, CA 94102-3214
R.04-04-026

MARC D. JOSEPH
ATTORNEY AT LAW
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO, CA 94080
R.04-04-026

R.04-04-026

Tuesday, July 17, 2007

CATHY A. KARLSTAD
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770
R.04-04-026

JOSEPH M. KARP
ATTORNEY AT LAW
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO, CA 94111-5802
R.04-04-026

RANDALL W. KEEN
ATTORNEY AT LAW
MANATT PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES, CA 90064
R.04-04-026

CAROLYN KEHREIN
ENERGY MANAGEMENT SERVICES
1505 DUNLAP COURT
DIXON, CA 95620-4208
R.04-04-026

STEVEN KELLY
POLICY DIRECTOR
INDEPENDENT ENERGY PRODUCERS ASSN
1215 K STREET, SUITE 900
SACRAMENTO, CA 95814
R.04-04-026

DOUGLAS K. KERNER
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS LLP
2015 H STREET
SACRAMENTO, CA 95814
R.04-04-026

NIELS KJELLUND
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MAIL CODE B9A
SAN FRANCISCO, CA 94105-1814
R.04-04-026

GREGORY S.G. KLATT
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367-8102
R.04-04-026

GARSON KNAPP
FPL ENERGY, LLC
770 UNIVERSE BLVD.
JUNO BEACH, FL 33408
R.04-04-026

SUZANNE KOROSEC
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
MS-45
SACRAMENTO, CA 95184
R.04-04-026

JOSEPH LANGENBERG
CENTRAL CALIFORNIA POWER
949 EAST ANNADALE AVE., A210
FRESNO, CA 93706
R.04-04-026

CLARE LAUFENBERG
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 46
SACRAMENTO, CA 95814
R.04-04-026

Ellen S. LeVine
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5028
SAN FRANCISCO, CA 94102-3214
R.04-04-026

JUDE LEBLANC
BAKER & HOSTETLER LLP
600 ANTON BLVD., SUITE 900
COSTA MESA, CA 92626
R.04-04-026

EVELYN C. LEE
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MAIL DROP 30A
SAN FRANCISCO, CA 94105
R.04-04-026

JOHN W. LESLIE
ATTORNEY AT LAW
LUCIE, FORWARD, HAMILTON & SCRIPPS,
LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 92130-2592
R.04-04-026

DONALD C. LIDDELL
ATTORNEY AT LAW
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103
R.04-04-026

KAREN LINDH
LINDH & ASSOCIATES
7909 WALERGA ROAD, NO. 112, PMB119
ANTELOPE, CA 95843
R.04-04-026

R.04-04-026

Tuesday, July 17, 2007

JANICE LIN
MANAGING PARTNER
STRATEGEN CONSULTING LLC
146 VICENTE ROAD
BERKELEY, CA 94705
R.04-04-026

GRACE LIVINGSTON-NUNLEY
ASSISTANT PROJECT MANAGER
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO, CA 94177
R.04-04-026

Mark R. Loy
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4205
SAN FRANCISCO, CA 94102-3214
R.04-04-026

ED LUCHA
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MAIL CODE B9A
SAN FRANCISCO, CA 94105
R.04-04-026

Burton Mattson
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5104
SAN FRANCISCO, CA 94102-3214
R.04-04-026

CHARLES MANZUK
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP 32D
SAN DIEGO, CA 92123
R.04-04-026

RICHARD MCCANN
M.CUBED
2655 PORTAGE BAY ROAD, SUITE 3
DAVIS, CA 95616
R.04-04-026

KEITH MCCREA
ATTORNEY AT LAW
SUTHERLAND, ASBILL & BRENNAN
1275 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004-2415
R.04-04-026

KARLY MCCRORY
SOLAR DEVELOPMENT
2424 PROFESSIONAL DRIVE
ROSEVILLE, CA 95677
R.04-04-026

LIZBETH MCDANNEL
2244 WALNUT GROVE AVE., QUAD 4D
ROSEMEAD, CA 91770
R.04-04-026

KAREN MCDONALD
POWEREX CORPORATION
666 BURRAND STREET
VANCOUVER, BC V6C 2X8
CANADA
R.04-04-026

JAN MCFARLAND
AMERICANS FOR SOLAR POWER
1100 11TH STREET, SUITE 323
SACRAMENTO, CA 95814
R.04-04-026

BRUCE MCLAUGHLIN
ATTORNEY AT LAW
BRAUN & BLAISING P.C.
915 L STREET, SUITE 1420
SACRAMENTO, CA 95814
R.04-04-026

JAMES MCMAHON
SENIOR ENGAGEMENT MANAGER
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078
R.04-04-026

JACK MCNAMARA
ATTORNEY AT LAW
MACK ENERGY COMPANY
PO BOX 1380
AGOURA HILLS, CA 91376-1380
R.04-04-026

ELENA MELLO
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO, NV 89520
R.04-04-026

ROSS MILLER
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
SACRAMENTO, CA 95814
R.04-04-026

MARCIE MILNER
CORAL POWER, L.L.C.
4445 EASTGATE MALL, SUITE 100
SAN DIEGO, CA 92121
R.04-04-026

R.04-04-026

Tuesday, July 17, 2007

STEPHEN A. S. MORRISON
ATTORNEY AT LAW
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM
234
SAN FRANCISCO, CA 94102
R.04-04-026

GREGG MORRIS
GREEN POWER INSTITUTE
2039 SHATTUCK AVE., SUITE 402
BERKELEY, CA 94704
R.04-04-026

DAVID MORSE
1411 W, COVELL BLVD., SUITE 106-292
DAVIS, CA 95616-5934
R.04-04-026

MEGAN MACNEIL MYERS
ATTORNEY AT LAW
LAW OFFICES OF MEGAN MACNEIL MYERS
PO BOX 638
LAKEPORT, CA 95453
R.04-04-026

SARA STECK MYERS
ATTORNEY AT LAW
LAW OFFICES OF SARA STECK MYERS
122 - 28TH AVENUE
SAN FRANCISCO, CA 94121
R.04-04-026

JESSICA NELSON
PLUMAS-SIERRA RURAL ELECTRIC CO-OP
73233 STATE ROUTE 70, STE A
PORTOLA, CA 96122-7064
R.04-04-026

DESPINA NIEHAUS
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32H
SAN DIEGO, CA 92123-1530
R.04-04-026

CHRISTOPHER O'BRIEN
SHARP SOLAR
VP STRATEGY AND GOVERNMENT
RELATIONS
3808 ALTON PLACE NW
WASHINGTON, DC 20016
R.04-04-026

KARLEEN O'CONNOR
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO, CA 94111
R.04-04-026

STANDISH O'GRADY
FRIENDS OF KIRKWOOD ASSOCIATION
31 PARKER AVENUE
SAN FRANCISCO, CA 94118
R.04-04-026

Noel Obiora
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4107
SAN FRANCISCO, CA 94102-3214
R.04-04-026

DAVID OLIVARES
ELECTRIC RESOURCE
MODESTO IRRIGATION DISTRICT
PO BOX 4060
MODESTO, CA 95352
R.04-04-026

DAVID OLSEN
IMPERIAL VALLEY STUDY GROUP
3804 PACIFIC COAST HIGHWAY
VENTURA, CA 93001
R.04-04-026

DAVID ORTH
GENERAL MANAGER
KINGS RIVER CONSERVATION DISTRICT
4886 EAST JENSEN AVENUE
FRESNO, CA 93725
R.04-04-026

FREDERICK M. ORTLIEB
OFFICE OF CITY ATTORNEY
CITY OF SAN DIEGO
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CA 92101
R.04-04-026

LAURIE PARK
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078
R.04-04-026

JUDY PAU
DAVIS, WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533
R.04-04-026

CARL PECHMAN
POWER ECONOMICS
901 CENTER STREET
SANTA CRUZ, CA 95060
R.04-04-026

R.04-04-026

Tuesday, July 17, 2007

JANIS C. PEPPER
CLEAN POWER MARKETS, INC.
PO BOX 3206
LOS ALTOS, CA 94024
R.04-04-026

GABE PETLIN
3 PHASES ENERGY SERVICES
6 FUNSTON AVENUE
SAN FRANCISCO, CA 94129
R.04-04-026

RYAN PLETKA
RENEWABLE ENERGY PROJECT MANAGER
BLACK & VEATCH
11401 LAMAR
OVERLAND PARK, KS 66211
R.04-04-026

KEVIN PORTER
EXETER ASSOCIATES, INC.
5565 STERRETT PLACE
COLUMBIA, MD 21044
R.04-04-026

SNULLER PRICE
ENERGY AND ENVIRONMENTAL
ECONOMICS
101 MONTGOMERY, SUITE 1600
SAN FRANCISCO, CA 94104
R.04-04-026

RASHA PRINCE
SAN DIEGO GAS & ELECTRIC
555 WEST 5TH STREET, GT14D6
LOS ANGELES, CA 90013
R.04-04-026

NICOLAS PROCOS
ALAMEDA POWER & TELECOM
2000 GRAND STREET
ALAMEDA, CA 94501-0263
R.04-04-026

MARC PRYOR
CALIFORNIA ENERGY COMMISSION
1516 9TH ST, MS 20
SACRAMENTO, CA 95814
R.04-04-026

NANCY RADER
CALIFORNIA WIND ENERGY ASSOCIATION
2560 NINTH STREET, SUITE 213A
BERKELEY, CA 94710
R.04-04-026

HEATHER RAITT
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 45
SACRAMENTO, CA 95814
R.04-04-026

ERIN RANSLOW
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078
R.04-04-026

JOHN R. REDDING
ARCTURUS ENERGY CONSULTING
44810 ROSEWOOD TERRACE
MENDOCINO, CA 95460
R.04-04-026

L. JAN REID
COAST ECONOMIC CONSULTING
3185 GROSS ROAD
SANTA CRUZ, CA 95062
R.04-04-026

RHONE RESCH
SOLAR ENERGY INDUSTRIES ASSOCIATION
805 FIFTEENTH STREET, N.W., SUITE 510
WASHINGTON, DC 20005
R.04-04-026

THEODORE E. ROBERTS
ATTORNEY AT LAW
SEMPRA ENERGY
101 ASH STREET, HQ 13D
SAN DIEGO, CA 92101-3017
R.04-04-026

HAROLD M. ROMANOWITZ
CHIEF OPERATING OFFICER
OAK CREEK ENERGY SYSTEMS, INC.
14633 WILLOW SPRINGS ROAD
MOJAVE, CA 93501
R.04-04-026

GRANT A. ROSENBLUM
STAFF COUNSEL
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
R.04-04-026

JP ROSS
DEPUTY DIRECTOR
THE VOTE SOLAR INITIATIVE
300 BRANNAN STREET, SUITE 609
SAN FRANCISCO, CA 94107
R.04-04-026

R.04-04-026

Tuesday, July 17, 2007

ROB ROTH
SACRAMENTO MUNICIPAL UTILITY
DISTRICT
6201 S STREET MS 75
SACRAMENTO, CA 95817
R.04-04-026

Nancy Ryan
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5217
SAN FRANCISCO, CA 94102-3214
R.04-04-026

JUDITH SANDERS
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
R.04-04-026

DAVID SAUL
COO
SOLEL, INC.
701 NORTH GREEN VALLEY PKY, STE 200
HENDERSON, NV 89074
R.04-04-026

Brian D. Schumacher
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
AREA 4-A
SAN FRANCISCO, CA 94102-3214
R.04-04-026

JENINE SCHENK
APS ENERGY SERVICES
400 E. VAN BUREN STREET, SUITE 750
PHOENIX, AZ 85004
R.04-04-026

REED V. SCHMIDT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY, CA 94703-2714
R.04-04-026

DONALD SCHOENBECK
RCS, INC.
900 WASHINGTON STREET, SUITE 780
VANCOUVER, WA 98660
R.04-04-026

LINDA Y. SHERIF
ATTORNEY AT LAW
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON, CA 94588
R.04-04-026

WILLIAM P. SHORT
RIDGEWOOD POWER MANAGEMENT, LLC
947 LINWOOD AVENUE
RIDGEWOOD, NJ 7450
R.04-04-026

Anne E. Simon
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5024
SAN FRANCISCO, CA 94102-3214
R.04-04-026

KEVIN J. SIMONSEN
ENERGY MANAGEMENT SERVICES
646 EAST THIRD AVENUE
DURANGO, CO 81301
R.04-04-026

Donald R Smith
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4209
SAN FRANCISCO, CA 94102-3214
R.04-04-026

AIMEE M. SMITH
ATTORNEY AT LAW
SEMPRA ENERGY
101 ASH STREET HQ13
SAN DIEGO, CA 92101
R.04-04-026

CAROL A. SMOOTS
PERKINS COIE LLP
607 FOURTEENTH STREET, NW, SUITE 800
WASHINGTON, DC 20005
R.04-04-026

JAMES D. SQUERI
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY &
LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
R.04-04-026

F. Jackson Stoddard
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5040
SAN FRANCISCO, CA 94102-3214
R.04-04-026

CARL STEEN
BAKER & HOSTETLER LLP
600 ANTON BLVD., SUITE 900
COSTA MESA, CA 92626
R.04-04-026

R.04-04-026

Tuesday, July 17, 2007

PATRICK STONER
PROGRAM DIRECTOR
LOCAL GOVERNMENT COMMISSION
1303 J STREET, SUITE 250
SACRAMENTO, CA 95814
R.04-04-026

VENKAT SURAVARAPU
ASSOCIATES DIRECTOR
CAMBRIDGE ENERGY RESEARCH
ASSOCIATES
1150 CONNECTICUT AVENUE NW, STE. 201
WASHINGTON, DC 20036
R.04-04-026

KENNY SWAIN
POWER ECONOMICS
901 CENTER STREET
SANTA CRUZ, CA 95060
R.04-04-026

KAREN TERRANOVA
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, STE 2200
SAN FRANCISCO, CA 94104
R.04-04-026

LEE TERRY
CALIFORNIA DEPARTMENT OF WATER
RESOURCES
3310 EL CAMINO AVENUE
SACRAMENTO, CA 95821
R.04-04-026

PATRICIA THOMPSON
SUMMIT BLUE CONSULTING
2920 CAMINO DIABLO, SUITE 210
WALNUT CREEK, CA 94597
R.04-04-026

JANE H. TURNBULL
LEAGUE OF WOMEN VOTERS OF
CALIFORNIA
64 LOS ALTOS SQUARE
LOS ALTOS, CA 94022
R.04-04-026

ANDREW J. VAN HORN
VAN HORN CONSULTING
12 LIND COURT
ORINDA, CA 94563
R.04-04-026

ROBIN J. WALTHER
1380 OAK CREEK DRIVE, NO. 316
PALO ALTO, CA 94304-2016
R.04-04-026

DEVRA WANG
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA 94104
R.04-04-026

JAMES WEIL
AGLET CONSUMER ALLIANCE
PO BOX 37
COOL, CA 95614
R.04-04-026

JON WELNER
PAUL HASTINGS JANOFKY & WALKER LLP
55 SECOND STREET, 24TH FLOOR
SAN FRANCISCO, CA 94105-3441
R.04-04-026

WILLIAM W. WESTERFIELD III
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS L.L.P.
2015 H STREET
SACRAMENTO, CA 95814
R.04-04-026

Jane Whang
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5029
SAN FRANCISCO, CA 94102-3214
R.04-04-026

KEITH WHITE
931 CONTRA COSTA DRIVE
EL CERRITO, CA 94530
R.04-04-026

VALERIE J. WINN
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, B9A
SAN FRANCISCO, CA 94177-0001
R.04-04-026

RYAN WISER
BERKELEY LAB
ONE CYCLOTRON ROAD
BERKELEY, CA 94720
R.04-04-026

JAMES B. WOODRUFF
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, SUITE 342,
GO1
ROSEMEAD, CA 91770
R.04-04-026

R.04-04-026

Tuesday, July 17, 2007

KEVIN WOODRUFF
WOODRUFF EXPERT SERVICES, INC.
1100 K STREET, SUITE 204
SACRAMENTO, CA 95814
R.04-04-026

VIKKI WOOD
SACRAMENTO MUNICIPAL UTILITY
DISTRICT
6301 S STREET, MS A204
SACRAMENTO, CA 95817-1899
R.04-04-026

CATHY S. WOOLLUMS
MIDAMERICAN ENERGY HOLDINGS
COMPANY
106 EAST SECOND STREET
DAVENPORT, IA 52801
R.04-04-026

LINDA WRAZEN
SEMPRA ENERGY REGULATORY AFFAIRS
101 ASH STREET, HQ16C
SAN DIEGO, CA 92101
R.04-04-026

JASON YAN
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MAIL CODE B13L
SAN FRANCISCO, CA 94105
R.04-04-026

HUGH YAO
SOUTHERN CALIFORNIA GAS COMPANY
555 W. 5TH ST, GT22G2
LOS ANGELES, CA 90013
R.04-04-026

KATE ZOCCHETTI
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-45
SACRAMENTO, CA 95814
R.04-04-026

CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
R.04-04-026

MRW & ASSOCIATES, INC.
1814 FRANKLIN STREET, SUITE 720
OAKLAND, CA 94612
R.04-04-026

CALIFORNIA ENERGY MARKETS
517-B POTRERO AVENUE
SAN FRANCISCO, CA 94110
R.04-04-026

R.06-02-012

Wednesday, July 18, 2007

JASON ABIECUNAS
BLACK & BEATCH GLOBAL RENEWABLE
ENERGY
RENEWABLE ENERGY CONSULTANT
11401 LAMAR
OVERLAND PARK, KS 66211
R.06-02-012

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
R.06-02-012

LYNN M. ALEXANDER
LMA CONSULTING
129 REDWOOD AVENUE
CORTE MADERA, CA 94925
R.06-02-012

CATHIE ALLEN
PACIFICORP
825 NE MULTNOMAH STREET, SUITE 2000
PORTLAND, OR 97232
R.06-02-012

GARY L. ALLEN
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
R.06-02-012

SCOTT J. ANDERS
RESEARCH/ADMINISTRATIVE DIRECTOR
UNIVERSITY OF SAN DIEGO SCHOOL OF
LAW
5998 ALCALA PARK
SAN DIEGO, CA 92110
R.06-02-012

ROD AOKI
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104
R.06-02-012

PHILIPPE AUCLAIR
11 RUSSELL COURT
WALNUT CREEK, CA 94598
R.06-02-012

Amanda C. Baker
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
AREA
SAN FRANCISCO, CA 94102-3214
R.06-02-012

ELIZABETH BAKER
SUMMIT BLUE CONSULTING
1722 14TH STREET, SUITE 230
BOULDER, CO 80304
R.06-02-012

WHITNEY BARDWICK
MP2 CAPITAL
1101 5TH AVENUE, SUITE 360
SAN RAFAEL, CA 94901
R.06-02-012

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO, CA 95460
R.06-02-012

R. THOMAS BEACH
PRINCIPAL CONSULTANT
CROSSBORDER ENERGY
2560 NINTH STREET, SUITE 213A
BERKELEY, CA 94710-2557
R.06-02-012

KATE BEARDSLEY
PG&E
PO BOX 770000
SAN FRANCISCO, CA 94177
R.06-02-012

C. SUSIE BERLIN
MC CARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, STE. 501
SAN JOSE, CA 95113
R.06-02-012

RYAN BERNARDO
BRAUN & BLAISING, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814
R.06-02-012

SCOTT BLAISING
ATTORNEY AT LAW
BRAUN & BLAISING, P.C.
915 L STREET, SUITE 1420
SACRAMENTO, CA 95814
R.06-02-012

BILLY BLATTNER
SAN DIEGO GAS & ELECTRIC COMPANY
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO, CA 94102
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

Traci Bone
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5206
SAN FRANCISCO, CA 94102-3214
R.06-02-012

ASHLEE M. BONDS
THELEN REID BROWN RAYSMAN&STEINER
LLP
101 SECOND STREET
SAN FRANCISCO, CA 94105
R.06-02-012

WILLIAM H. BOOTH
ATTORNEY AT LAW
LAW OFFICE OF WILLIAM H. BOOTH
1500 NEWELL AVE., 5TH FLOOR
WALNUT CREEK, CA 94556
R.06-02-012

KAREN E. BOWEN
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO, CA 94111
R.06-02-012

CLARE BREIDENICH
224 1/2 24TH AVE. EAST
SEATTLE, WA 98112
R.06-02-012

GLORIA BRITTON
ANZA ELECTRIC COOPERATIVE, INC.
PO BOX 391909
ANZA, CA 92539
R.06-02-012

DEBORAH BROCKETT
CONSULTANT
NAVIGANT CONSULTING, INC.
ONE MARKET STREET
SAN FRANCISCO, CA 94105
R.06-02-012

ANDREW B. BROWN
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95814
R.06-02-012

DAN L. CARROLL
ATTORNEY AT LAW
DOWNEY BRAND LLP
555 CAPITOL MALL, 10TH FLOOR
SACRAMENTO, CA 95814
R.06-02-012

TIMOTHY CASTILLE
LANDS ENERGY CONSULTING, INC.
18109 SE 42ND STREET
VANCOUVER, WA 98683
R.06-02-012

STEVE CHADIMA
ENERGY INNOVATIONS, INC.
130 WEST UNION STREET
PASADENA, CA 91103
R.06-02-012

JENNIFER CHAMBERLIN
STRATEGIC ENERGY, LLC
2633 WELLINGTON CT.
CLYDE, CA 94520
R.06-02-012

CLIFF CHEN
UNION OF CONCERNED SCIENTIST
2397 SHATTUCK AVENUE, STE 203
BERKELEY, CA 94704
R.06-02-012

THOMAS P. CORR
SEMPRA ENERGY GLOBAL ENTERPRISES
101 ASH STREET, HQ16C
SAN DIEGO, CA 92101
R.06-02-012

DOUGLAS E. COVER
ENVIRONMENTAL SCIENCE ASSOCIATES
225 BUSH STREET, SUITE 1700
SAN FRANCISCO, CA 94104
R.06-02-012

BRIAN CRAGG
ATTORNEY AT LAW
GOODIN, MACBRIDE, SQUERI, RITCHIE &
DAY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
R.06-02-012

HOLLY B. CRONIN
STATE WATER PROJECT OPERATIONS DIV
CALIFORNIA DEPARTMENT OF WATER
RESOURCES
3310 EL CAMINO AVE., LL-90
SACRAMENTO, CA 95821
R.06-02-012

WILLIAM CRONIN
ENERGY AMERICA, LLC
263 TRESSER BLVD.
STAMFORD, CT 6901
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

JOHN DALESSI
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078
R.06-02-012

KEVIN DAVIES
SOLAR DEVELOPMENT INC.
2424 PROFESSIONAL DR.
ROSEVILLE, CA 95661-7773
R.06-02-012

DOUG DAVIE
DAVIE CONSULTING, LLC
3390 BEATTY DRIVE
EL DORADO HILLS, CA 95762
R.06-02-012

KYLE L. DAVIS
PACIFICORP
825 NE MULTNOMAH,
PORTLAND, OR 97232
R.06-02-012

MICHAEL B. DAY
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY &
LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
R.06-02-012

NEAL DE SNOO
ENERGY OFFICE
CITY OF BERKELEY
2180 MILVIA AVENUE
BERKELEY, CA 94704
R.06-02-012

MICHAEL DEANGELIS
SACRAMENTO MUNICIPAL UTILITY
DISTRICT
6201 S STREET
SACRAMENTO, CA 95817-1899
R.06-02-012

LISA M. DECKER
CONSTELLATION ENERGY GROUP, INC.
111 MARKET PLACE, SUITE 500
BALTIMORE, MD 21202
R.06-02-012

RALPH E. DENNIS
DIRECTOR, REGULATORY AFFAIRS
FELLON-MCCORD & ASSOCIATES
9960 CORPORATE CAMPUS DRIVE, STE
2000
LOUISVILLE, KY 40223
R.06-02-012

WILLIAM F. DIETRICH
ATTORNEY AT LAW
DIETRICH LAW
2977 YGNACIO VALLEY ROAD, 613
WALNUT CREEK, CA 94598-3535
R.06-02-012

TREVOR DILLARD
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD, MS S4A50
RENO, NV 89520
R.06-02-012

Paul Douglas
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
AREA 4-A
SAN FRANCISCO, CA 94102-3214
R.06-02-012

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367
R.06-02-012

ELIZABETH DOUGLASS
STAFF WRITER
LOS ANGELES TIMES
202 WEST FIRST STREET
LOS ANGELES, CA 90012
R.06-02-012

Dorothy Duda
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5109
SAN FRANCISCO, CA 94102-3214
R.06-02-012

KEVIN DUGGAN
CALPINE COPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON, CA 94588
R.06-02-012

KIRBY DUSEL
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670
R.06-02-012

JOHN DUTCHER
VICE PRESIDENT - REGULATORY AFFAIRS
MOUNTAIN UTILITIES
3210 CORTE VALENCIA
FAIRFIELD, CA 94534-7875
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

HARVEY EDER
PUBLIC SOLAR POWER COALITION
1218 12TH ST., 25
SANTA MONICA, CA 90401
R.06-02-012

BARRY H. EPSTEIN
FITZGERALD, ABBOTT & BEARDSLEY, LLP
1221 BROADWAY, 21ST FLOOR
OAKLAND, CA 94612
R.06-02-012

SAEED FARROKHPAY
FEDERAL ENERGY REGULATORY
COMMISSION
110 BLUE RAVINE RD., SUITE 107
FOLSOM, CA 95630
R.06-02-012

DIANE I. FELLMAN
ATTORNEY AT LAW
FPL ENERGY, LLC
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102
R.06-02-012

PAUL FENN
LOCAL POWER
4281 PIEDMONT AVE.
OAKLAND, CA 94611
R.06-02-012

Julie A Fitch
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
EXECUTIVE DIVISION ROOM 5203
SAN FRANCISCO, CA 94102-3214
R.06-02-012

LAW DEPARTMENT FILE ROOM
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO, CA 94120-7442
R.06-02-012

REGULATORY FILE ROOM
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105
R.06-02-012

CENTRAL FILES
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP31E
SAN DIEGO, CA 92123
R.06-02-012

RYAN FLYNN
ATTORNEY
PACIFICORP
825 NE MULTNOMAH, SUITE 1800
PORTLAND, OR 97232
R.06-02-012

BRIAN C. FRECKMANN
C/O FOUNDATION PARTNERS
100 DRAKES LANDING ROAD NO. 125
GREENBRAE, CA 94904
R.06-02-012

MATTHEW FREEDMAN
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102
R.06-02-012

ROBERT B. GEX
ATTORNEY AT LAW,
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533
R.06-02-012

Anne Gillette
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
AREA 4-A
SAN FRANCISCO, CA 94102-3214
R.06-02-012

JEDEDIAH J. GIBSON
ELLISON SCHNEIDER & HARRIS LLP
2015 H STREET
SACRAMENTO, CA 95814
R.06-02-012

MICHAEL J. GILMORE
INLAND ENERGY
3501 JAMBOREE RD
NEWPORT BEACH, CA 92660
R.06-02-012

RAMONA GONZALEZ
EAST BAY MUNICIPAL UTILITY DISTRICT
375 ELEVENTH STREET, M/S NO. 205
OAKLAND, CA 94607
R.06-02-012

JEFFREY P. GRAY
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

JOE GRECO
CAITHNESS OPERATING COMPANY
9590 PROTOTYPE COURT, SUITE 200
RENO, NV 89521
R.06-02-012

YVONNE GROSS
REGULATORY POLICY MANAGER
SEMPRA ENERGY
101 ASH STREET, HQ08C
SAN DIEGO, CA 92101
R.06-02-012

DANIEL V. GULINO
RIDGEWOOD POWER MANAGEMENT, LLC
947 LINWOOD AVENUE
RIDGEWOOD, NJ 7450
R.06-02-012

Julie Halligan
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 2203
SAN FRANCISCO, CA 94102-3214
R.06-02-012

JANICE G. HAMRIN
CENTER FOR RESOURCE SOLUTIONS
PO BOX 29512
SAN FRANCISCO, CA 94129
R.06-02-012

PETER W. HANSCHEN
ATTORNEY AT LAW
MORRISON & FOERSTER, LLP
101 YGNACIO VALLEY ROAD, SUITE 450
WALNUT CREEK, CA 94596
R.06-02-012

ARNO HARRIS
RECURRENT ENERGY, INC.
220 HALLECK ST., SUITE 220
SAN FRANCISCO, CA 94129
R.06-02-012

FRANK W. HARRIS
REGULATORY ECONOMIST
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE
ROSEMEAD, CA 91770
R.06-02-012

ARTHUR L. HAUBENSTOCK
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105
R.06-02-012

LYNN M. HAUG
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95814-3512
R.06-02-012

DANIEL M. HECHT
ASSOCIATE GENERAL COUNSEL
SEMPRA ENERGY TRADING CORP.
58 COMMERCE ROAD
STAMFORD, CT 6902
R.06-02-012

ANN HENDRICKSON
COMMERCE ENERGY, INC.
222 WEST LAS COLINAS BLVD., SUITE 950E
IRVING, TX 75039
R.06-02-012

CHRISTOPHER HILEN
ASSISTANT GENERAL COUNSEL
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO, NV 89511
R.06-02-012

SETH D. HILTON
STOEL RIVES
111 SUTTER ST., SUITE 700
SAN FRANCISCO, CA 94104
R.06-02-012

LENNY HOCHSCHILD
EVOLUTION MARKETS, LLC
RENEWABLE ENERGY MARKETS
425 MARKET STREET, SUITE 2200
SAN FRANCISCO, CA 94105
R.06-02-012

DAVID L. HUARD
ATTORNEY AT LAW
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES, CA 90064
R.06-02-012

TAMLYN M. HUNT
ENERGY PROGRAM DIRECTOR
COMMUNITY ENVIRONMENTAL COUNCIL
26 W. ANAPAMU ST., 2/F
SANTA BARBARA, CA 93101
R.06-02-012

MICHAEL A. HYAMS
POWER ENTERPRISE-REGULATORY
AFFAIRS
SAN FRANCISCO PUBLIC UTILITIES COMM
1155 MARKET ST., 4TH FLOOR
SAN FRANCISCO, CA 94103
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

Louis M Irwin
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4209
SAN FRANCISCO, CA 94102-3214
R.06-02-012

TODD JAFFE
ENERGY BUSINESS BROKERS AND
CONSULTANTS
3420 KEYSER ROAD
BALTIMORE, MD 21208
R.06-02-012

MARC D. JOSEPH
ATTORNEY AT LAW
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO, CA 94080
R.06-02-012

Sara M. Kamins
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
AREA 4-A
SAN FRANCISCO, CA 94102-3214
R.06-02-012

EVELYN KAHL
ATTORNEY AT LAW
ALCANTAR & KAHL LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104
R.06-02-012

CATHY A. KARLSTAD
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770
R.06-02-012

RANDALL W. KEEN
ATTORNEY AT LAW
MANATT PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES, CA 90064
R.06-02-012

CAROLYN KEHREIN
ENERGY MANAGEMENT SERVICES
1505 DUNLAP COURT
DIXON, CA 95620-4208
R.06-02-012

STEVEN KELLY
POLICY DIRECTOR
INDEPENDENT ENERGY PRODUCERS ASSN
1215 K STREET, SUITE 900
SACRAMENTO, CA 95814
R.06-02-012

DOUGLAS K. KERNER
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS LLP
2015 H STREET
SACRAMENTO, CA 95814
R.06-02-012

DANIEL A. KING
SEMPRA ENERGY
101 ASH STREET, HQ 12
SAN DIEGO, CA 92101
R.06-02-012

NIELS KJELLUND
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MAIL CODE B9A
SAN FRANCISCO, CA 94105-1814
R.06-02-012

GREGORY S.G. KLATT
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367-8102
R.06-02-012

GARSON KNAPP
FPL ENERGY, LLC
770 UNIVERSE BLVD.
JUNO BEACH, FL 33408
R.06-02-012

BILL KNOX
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 45
SACRAMENTO, CA 95814-5504
R.06-02-012

SUZANNE KOROSEC
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
MS-45
SACRAMENTO, CA 95184
R.06-02-012

AVIS KOWALEWSKI
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON, CA 94588
R.06-02-012

STEPHANIE LA SHAWN
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO, CA 94177
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

JOSEPH LANGENBERG
CENTRAL CALIFORNIA POWER
949 EAST ANNADALE AVE., A210
FRESNO, CA 93706
R.06-02-012

ERIC LARSEN
ENVIRONMENTAL SCIENTIST
RCM INTERNATIONAL, L.L.C.
PO BOX 4716
BERKELEY, CA 94704
R.06-02-012

RICH LAUCKHART
GLOBAL ENERGY
2379 GATEWAY OAKS DR.
SACRAMENTO, CA 95833
R.06-02-012

CLARE LAUFENBERG
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 46
SACRAMENTO, CA 95814
R.06-02-012

Ellen S. LeVine
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5028
SAN FRANCISCO, CA 94102-3214
R.06-02-012

JUDE LEBLANC
BAKER & HOSTETLER LLP
600 ANTON BLVD., SUITE 900
COSTA MESA, CA 92626
R.06-02-012

EVELYN C. LEE
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000
SAN FRANCISCO, CA 94177
R.06-02-012

YAREK LEHR
CITY OF CORONA DEPT. OF WATER &
POWER
730 CORPORATION YARD WAY
CORONA, CA 92880
R.06-02-012

BRENDA LEMAY
DIRECTOR
HORIZON WIND ENERGY
1600 SHATTUCK, SUITE 222
BERKELEY, CA 94709
R.06-02-012

JOHN W. LESLIE
ATTORNEY AT LAW
LUCE, FORWARD, HAMILTON & SCRIPPS,
LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 92130-2592
R.06-02-012

DONALD C. LIDDELL, P.C.
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103
R.06-02-012

KAREN LINDH
LINDH & ASSOCIATES
7909 WALERGA ROAD, NO. 112, PMB119
ANTELOPE, CA 95843
R.06-02-012

JANICE LIN
MANAGING PARTNER
STRATEGEN CONSULTING LLC
146 VICENTE ROAD
BERKELEY, CA 94705
R.06-02-012

GRACE LIVINGSTON-NUNLEY
ASSISTANT PROJECT MANAGER
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO, CA 94177
R.06-02-012

Mark R. Loy
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4205
SAN FRANCISCO, CA 94102-3214
R.06-02-012

JODY S. LONDON
JODY LONDON CONSULTING
PO BOX 3629
OAKLAND, CA 94609
R.06-02-012

ED LUCHA
PROJECT COORDINATOR
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO, CA 94177
R.06-02-012

Jaclyn Marks
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5306
SAN FRANCISCO, CA 94102-3214
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

Burton Mattson
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5104
SAN FRANCISCO, CA 94102-3214
R.06-02-012

BILL MASON
SENIOR ASSET ADMINISTRATOR
ENXCO, INC.
PO BOX 581043
N. PALM SPRINGS, CA 92258
R.06-02-012

DANIELLE MATTHEWS SEPERAS
CALPINE CORPORATION
1125 11TH STREET, SUITE 242
SACRAMENTO, CA 95814
R.06-02-012

CHRISTOPHER J. MAYER
MODESTO IRRIGATION DISTRICT
PO BOX 4060
MODESTO, CA 95352-4060
R.06-02-012

MICHAEL MAZUR
CHIEF TECHNICAL OFFICER
3 PHASES ENERGY SERVICES, LLC
2100 SEPULVEDA BLVD., SUITE 38
MANHATTAN BEACH, CA 90266
R.06-02-012

RICHARD MCCANN
M.CUBED
2655 PORTAGE BAY ROAD, SUITE 3
DAVIS, CA 95616
R.06-02-012

KEITH MCCREA
ATTORNEY AT LAW
SUTHERLAND, ASBILL & BRENNAN
1275 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004-2415
R.06-02-012

LIZBETH MCDANNEL
2244 WALNUT GROVE AVE., QUAD 4D
ROSEMEAD, CA 91770
R.06-02-012

KAREN MCDONALD
POWEREX CORPORATION
666 BURRAND STREET
VANCOUVER, BC V6C 2X8
CANADA
R.06-02-012

JAN MCFARLAND
AMERICANS FOR SOLAR POWER
1100 11TH STREET, SUITE 323
SACRAMENTO, CA 95814
R.06-02-012

BRUCE MCCLAUGHLIN
ATTORNEY AT LAW
BRAUN & BLAISING P.C.
915 L STREET, SUITE 1420
SACRAMENTO, CA 95814
R.06-02-012

JAMES MCMAHON
SENIOR ENGAGEMENT MANAGER
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078
R.06-02-012

JACK MCNAMARA
ATTORNEY AT LAW
MACK ENERGY COMPANY
PO BOX 1380
AGOURA HILLS, CA 91376-1380
R.06-02-012

ELENA MELLO
SIERRA PACIFIC POWER COMPANY
6100 NEIL RD.
RENO, NV 89511
R.06-02-012

CHARLES MIDDLEKAUFF
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET
SAN FRANCISCO, CA 94105
R.06-02-012

ROSS MILLER
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
SACRAMENTO, CA 95814
R.06-02-012

MARCIE MILNER
CORAL POWER, L.L.C.
4445 EASTGATE MALL, SUITE 100
SAN DIEGO, CA 92121
R.06-02-012

ANN MOORE
CITY OF CHULA VISTA
276 FOURTH AVENUE
CHULA VISTA, CA 91910
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

RONALD MOORE
GOLDEN STATE WATER/BEAR VALLEY
ELECTRIC
630 EAST FOOTHILL BOULEVARD
SAN DIMAS, CA 91773
R.06-02-012

STEPHEN A. S. MORRISON
ATTORNEY AT LAW
CITY & COUNTY OF SAN FRANCISCO
1 DR. CARLTON B.GOODLETT PLACE STE
234
SAN FRANCISCO, CA 94102
R.06-02-012

GREGORY MORRIS
GREEN POWER INSTITUTE
2039 SHATTUCK AVE., SUITE 402
BERKELEY, CA 94704
R.06-02-012

DAVID MORSE
1411 W. COVELL BLVD., SUITE 106-292
DAVIS, CA 95616-5934
R.06-02-012

THERESA L. MUELLER
ATTORNEY AT LAW
SAN FRANCISCO CITY ATTORNEY
CITY HALL, ROOM 234
SAN FRANCISCO, CA 94102-4682
R.06-02-012

SUSAN MUNVES
ENERGY AND GREEN BLDG. PROG. ADMIN.
CITY OF SANTA MONICA
1212 5TH STREET, FIRST FLOOR
SANTA MONICA, CA 90401
R.06-02-012

CLYDE MURLEY
1031 ORDWAY STREET
ALBANY, CA 94706
R.06-02-012

SARA STECK MYERS
LAW OFFICES OF SARA STECK MYERS
122 28TH AVE.
SAN FRANCISCO, CA 94121
R.06-02-012

DESPINA NIEHAUS
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32H
SAN DIEGO, CA 92123-1530
R.06-02-012

CHRISTOPHER O'BRIEN
SHARP SOLAR
VP STRATEGY AND GOVERNMENT
RELATIONS
3808 ALTON PLACE NW
WASHINGTON, DC 20016
R.06-02-012

STANDISH O'GRADY
FRIENDS OF KIRKWOOD ASSOCIATION
31 PARKER AVENUE
SAN FRANCISCO, CA 94118
R.06-02-012

Noel Obiora
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4107
SAN FRANCISCO, CA 94102-3214
R.06-02-012

DAVID OLIVARES
ELECTRIC RESOURCE
MODESTO IRRIGATION DISTRICT
PO BOX 4060
MODESTO, CA 95352
R.06-02-012

DAVID OLSEN
IMPERIAL VALLEY STUDY GROUP
3804 PACIFIC COAST HIGHWAY
VENTURA, CA 93001
R.06-02-012

DAVID ORTH
GENERAL MANAGER
KINGS RIVER CONSERVATION DISTRICT
4886 EAST JENSEN AVENUE
FRESNO, CA 93725
R.06-02-012

FREDERICK M. ORTLIEB
OFFICE OF CITY ATTORNEY
CITY OF SAN DIEGO
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CA 92101
R.06-02-012

LAURIE PARK
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078
R.06-02-012

JUDY PAU
DAVIS, WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

JANIS C. PEPPER
CLEAN POWER MARKETS, INC.
PO BOX 3206
LOS ALTOS, CA 94024
R.06-02-012

GABE PETLIN
3 PHASES ENERGY SERVICES
6 FUNSTON AVENUE
SAN FRANCISCO, CA 94129
R.06-02-012

WILL PLAXICO
HELIOS ENERGY, LLC
31897 DEL OBISPO ST. SUITE 220
SAN JUAN CAPISTRANO, CA 92675
R.06-02-012

RYAN PLETKA
RENEWABLE ENERGY PROJECT MANAGER
BLACK & VEATCH
11401 LAMAR
OVERLAND PARK, KS 66211
R.06-02-012

KEVIN PORTER
EXETER ASSOCIATES, INC.
5565 STERRETT PLACE
COLUMBIA, MD 21044
R.06-02-012

SNULLER PRICE
ENERGY AND ENVIRONMENTAL
ECONOMICS
101 MONTGOMERY, SUITE 1600
SAN FRANCISCO, CA 94104
R.06-02-012

RASHA PRINCE
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH STREET, GT14D6
LOS ANGELES, CA 90013
R.06-02-012

NICOLAS PROCOS
ALAMEDA POWER & TELECOM
2000 GRAND STREET
ALAMEDA, CA 94501-0263
R.06-02-012

NANCY RADER
CALIFORNIA WIND ENERGY ASSOCIATION
2560 NINTH STREET, SUITE 213A
BERKELEY, CA 94710
R.06-02-012

HEATHER RAITT
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 45
SACRAMENTO, CA 95814
R.06-02-012

ERIN RANSLOW
NAVIGANT CONSULTING, INC.
3100 ZINFANDEL DRIVE, SUITE 600
RANCHO CORDOVA, CA 95670-6078
R.06-02-012

JOHN R. REDDING
ARCTURUS ENERGY CONSULTING
44810 ROSEWOOD TERRACE
MENDOCINO, CA 95460
R.06-02-012

L. JAN REID
COAST ECONOMIC CONSULTING
3185 GROSS ROAD
SANTA CRUZ, CA 95062
R.06-02-012

RHONE RESCH
SOLAR ENERGY INDUSTRIES ASSOCIATION
805 FIFTEENTH STREET, N.W., SUITE 510
WASHINGTON, DC 20005
R.06-02-012

THEODORE ROBERTS
ATTORNEY AT LAW
SEMPRA GLOBAL
101 ASH STREET, HQ 13D
SAN DIEGO, CA 92101-3017
R.06-02-012

HAROLD M. ROMANOWITZ
CHIEF OPERATING OFFICER
OAK CREEK ENERGY SYSTEMS, INC.
14633 WILLOW SPRINGS ROAD
MOJAVE, CA 93501
R.06-02-012

GRANT A. ROSENBLUM
STAFF COUNSEL
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
R.06-02-012

JP ROSS
DEPUTY DIRECTOR
THE VOTE SOLAR INITIATIVE
300 BRANNAN STREET, SUITE 609
SAN FRANCISCO, CA 94107
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

ROB ROTH
SACRAMENTO MUNICIPAL UTILITY
DISTRICT
6201 S STREET MS 75
SACRAMENTO, CA 95817
R.06-02-012

JUDITH SANDERS
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
R.06-02-012

DAVID SAUL
COO
SOLEL, INC.
701 NORTH GREEN VALLEY PKY, STE 200
HENDERSON, NV 89074
R.06-02-012

Brian D. Schumacher
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
AREA 4-A
SAN FRANCISCO, CA 94102-3214
R.06-02-012

Andrew Schwartz
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5119
SAN FRANCISCO, CA 94102-3214
R.06-02-012

JANINE L. SCANCARELLI
FOLGER LEVIN & KAHN LLP
275 BATTERY STREET, 23RD FLOOR
SAN FRANCISCO, CA 94111
R.06-02-012

JENINE SCHENK
APS ENERGY SERVICES
400 E. VAN BUREN STREET, SUITE 750
PHOENIX, AZ 85004
R.06-02-012

STEVEN S. SCHLEIMER
DIRECTOR, COMPLIANCE & REGULATORY
AFFAIRS
BARCLAYS BANK, PLC
200 PARK AVENUE, FIFTH FLOOR
NEW YORK, NY 10166
R.06-02-012

REED V. SCHMIDT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY, CA 94703-2714
R.06-02-012

DONALD SCHOENBECK
RCS, INC.
900 WASHINGTON STREET, SUITE 780
VANCOUVER, WA 98660
R.06-02-012

MICHAEL SHAMES
ATTORNEY AT LAW
UTILITY CONSUMERS' ACTION NETWORK
3100 FIFTH AVENUE, SUITE B
SAN DIEGO, CA 92103
R.06-02-012

LINDA Y. SHERIF
ATTORNEY AT LAW
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON, CA 94588
R.06-02-012

WILLIAM P. SHORT
RIDGEWOOD POWER MANAGEMENT, LLC
947 LINWOOD AVENUE
RIDGEWOOD, NJ 7450
R.06-02-012

Anne E. Simon
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5024
SAN FRANCISCO, CA 94102-3214
R.06-02-012

Sean A. Simon
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
AREA 4-A
SAN FRANCISCO, CA 94102-3214
R.06-02-012

KEVIN J. SIMONSEN
ENERGY MANAGEMENT SERVICES
646 EAST THIRD AVENUE
DURANGO, CO 81301
R.06-02-012

Donald R Smith
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4209
SAN FRANCISCO, CA 94102-3214
R.06-02-012

AIMEE M. SMITH
ATTORNEY AT LAW
SEMPRA ENERGY
101 ASH STREET HQ13
SAN DIEGO, CA 92101
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

CAROL A. SMOOTS
PERKINS COIE LLP
607 FOURTEENTH STREET, NW, SUITE 800
WASHINGTON, DC 20005
R.06-02-012

JOHN SNIFFEN
VICE PRESIDENT
ELEMENT MARKETS
1 SUGARCREEK BLVD., 201
SUGARLAND, TX 77478
R.06-02-012

JAMES D. SQUERI
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY &
LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
R.06-02-012

SEEMA SRINIVASAN
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104
R.06-02-012

CARL STEEN
BAKER & HOSTETLER LLP
600 ANTON BLVD., SUITE 900
COSTA MESA, CA 92626
R.06-02-012

PATRICK STONER
PROGRAM DIRECTOR
LOCAL GOVERNMENT COMMISSION
1303 J STREET, SUITE 250
SACRAMENTO, CA 95814
R.06-02-012

VENKAT SURAVARAPU
ASSOCIATES DIRECTOR
CAMBRIDGE ENERGY RESEARCH
ASSOCIATES
1150 CONNECTICUT AVENUE NW, STE. 201
WASHINGTON, DC 20036
R.06-02-012

KAREN TERRANOVA
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, STE 2200
SAN FRANCISCO, CA 94104
R.06-02-012

PATRICIA THOMPSON
SUMMIT BLUE CONSULTING
2920 CAMINO DIABLO, SUITE 210
WALNUT CREEK, CA 94597
R.06-02-012

NELLIE TONG
KEMA, INC.
492 NINTH STREET, SUITE 220
OAKLAND, CA 94607
R.06-02-012

DAVID TOWNLEY
18 BASSWOOD AVENUE
OAK PARK, CA 91377
R.06-02-012

SUSAN G. TRAUTMANN
SIERRA PACIFIC POWER COMPANY
6226 WEST SAHARA AVENUE
LAS VEGAS, NV 89151
R.06-02-012

Laura J. Tudisco
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5032
SAN FRANCISCO, CA 94102-3214
R.06-02-012

JANE H. TURNBULL
LEAGUE OF WOMEN VOTERS OF
CALIFORNIA
64 LOS ALTOS SQUARE
LOS ALTOS, CA 94022
R.06-02-012

ANDREW J. VAN HORN
VAN HORN CONSULTING
12 LIND COURT
ORINDA, CA 94563
R.06-02-012

WILLIAM V. WALSH
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770
R.06-02-012

ROBIN J. WALTHER
1380 OAK CREEK DRIVE, NO. 316
PALO ALTO, CA 94304-2016
R.06-02-012

DEVRA WANG
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA 94104
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

JOY A. WARREN
ATTORNEY AT LAW
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95354
R.06-02-012

JAMES WEIL
AGLET CONSUMER ALLIANCE
PO BOX 37
COOL, CA 95614
R.06-02-012

JON WELNER
PAUL HASTINGS JANOFFSKY & WALKER LLP
55 SECOND STREET, 24TH FLOOR
SAN FRANCISCO, CA 94105-3441
R.06-02-012

WILLIAM W. WESTERFIELD III
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS L.L.P.
2015 H STREET
SACRAMENTO, CA 95814
R.06-02-012

GREGGORY L. WHEATLAND
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95814
R.06-02-012

KEITH WHITE
931 CONTRA COSTA DRIVE
EL CERRITO, CA 94530
R.06-02-012

Laura Wisland
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
AREA
SAN FRANCISCO, CA 94102-3214
R.06-02-012

RICHARD F. WIEBE
LAW OFFICE OF RICHARD R. WIEBE
425 CALIFORNIA STREET, SUITE 2025
Center of Biological Diversity
SAN FRANCISCO, CA 92104
R.06-02-012

JOSEPH F. WIEDMAN
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY &
LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
R.06-02-012

VALERIE WINN
PROJECT MANAGER
PACIFIC GAS & ELECTRIC
77 BEALE STREET, B9A
SAN FRANCISCO, CA 94105
R.06-02-012

RYAN WISER
BERKELEY LAB
ONE CYCLOTRON ROAD
BERKELEY, CA 94720
R.06-02-012

JAMES B. WOODRUFF
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, SUITE 342,
GO1
ROSEMEAD, CA 91770
R.06-02-012

KEVIN WOODRUFF
WOODRUFF EXPERT SERVICES, INC.
1100 K STREET, SUITE 204
SACRAMENTO, CA 95814
R.06-02-012

VIKKI WOOD
SACRAMENTO MUNICIPAL UTILITY
DISTRICT
6301 S STREET, MS A204
SACRAMENTO, CA 95817-1899
R.06-02-012

CATHY S. WOOLLUMS
MIDAMERICAN ENERGY HOLDINGS
COMPANY
106 EAST SECOND STREET
DAVENPORT, IA 52801
R.06-02-012

CYNTHIA WOOTEN
LUMENX CONSULTING, INC.
1126 DELAWARE STREET
BERKELEY, CA 94702
R.06-02-012

LINDA WRAZEN
SEMPRA ENERGY REGULATORY AFFAIRS
101 ASH STREET, HQ16C
SAN DIEGO, CA 92101
R.06-02-012

KATE ZOCCHETTI
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-45
SACRAMENTO, CA 95814
R.06-02-012

R.06-02-012

Wednesday, July 18, 2007

CONSTELLATION NEW ENERGY, INC.
350 SOUTH GRAND AVENUE, SUITE 3800
LOS ANGELES, CA 90071
R.06-02-012

OCCIDENTAL POWER SERVICES, INC.
5 GREENWAY PLAZA, SUITE 110
HOUSTON, TX 77046
R.06-02-012

CORAL POWER, LLC
4445 EASTGATE MALL, SUITE 100
SAN DIEGO, CA 92121
R.06-02-012

CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
R.06-02-012

MRW & ASSOCIATES, INC.
1814 FRANKLIN STREET, SUITE 720
OAKLAND, CA 94612
R.06-02-012

AMERICAN UTILITY NETWORK
10705 DEER CANYON DRIVE
ALTA LOMA, CA 91737
R.06-02-012

PRAXAIR PLAINFIELD, INC.
2678 BISHOP DRIVE
SAN RAMON, CA 94583
R.06-02-012

PILOT POWER GROUP, INC.
9320 CHESAPEAKE DRIVE, SUITE 112
SAN DIEGO, CA 92123
R.06-02-012

APS ENERGY SERVICES COMPANY, INC.
400 E. VAN BUREN STREET, SUITE 750
PHOENIX, AZ 85004
R.06-02-012

SEMPRA ENERGY SOLUTIONS
101 ASH STREET, HQ09
SAN DIEGO, CA 92101-3017
R.06-02-012

NEW WEST ENERGY
BOX 61868
PHOENIX, AZ 85082-1868
R.06-02-012

CALIFORNIA ENERGY MARKETS
517-B POTRERO AVE.
SAN FRANCISCO, CA 94110-1431
R.06-02-012

SOCAL WATER/BEAR VALLEY ELECTRIC
630 EAST FOOTHILL BLVD.
SANTA DIMAS, CA 91773
R.06-02-012

3 PHASES ENERGY SERVICES
2100 SEPULVEDA BLVD., SUITE 37
MANHATTAN BEACH, CA 90266
R.06-02-012

STRATEGIC ENERGY, LTD.
7220 AVENIDA ENCINAS, SUITE 120
CARLSBAD, CA 92009
R.06-02-012

AOL UTILITY CORP.
12752 BARRETT LANE
SANTA ANA, CA 92705
R.06-02-012

ENERGY AMERICA, LLC
263 TRESSER BLVD.
STAMFORD, CT 6901
R.06-02-012